

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98-143
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| In re Applications of |) MM DOCKET NO. 92-6 |
| |) |
| NORMANDY BROADCASTING CORP. |) File No. BRH-910129UR |
| |) |
| For Renewal of License for Station |) |
| WYLR(FM) (95.9 MHz) |) |
| Glens Falls, New York |) |
| |) |
| LAWRENCE N. BRANDT |) File No. BPH-910430MB |
| |) |
| For a Construction Permit for a |) |
| New FM Station on 95.9 MHz at |) |
| Glens Falls, New York |) |

ORDER

Adopted: November 23, 1998

; Released: November 25, 1998

By the Assistant General Counsel, Administrative Law Division:

1. This order grants the Joint Request for Approval of Agreement filed January 30, 1998 by Normandy Broadcasting Corporation and Lawrence E. Brandt and amended September 29, 1998 by Normandy, Brandt and Entertronics, Inc., and accepts the amendment substituting Entertronics for Brandt, filed September 29, 1998 by Normandy, Brandt and Entertronics. Comments were filed by the Mass Media Bureau on February 12, June 17, and October 15, 1998.

2. By Initial Decision, 8 FCC Rcd 1 (ALJ 1992), the presiding Administrative Law Judge proposed denial of Normandy's application for renewal of its license for the Glens Falls, New York FM station and proposed grant of Brandt's application for a construction permit for a new FM station in that same community. Normandy and the Mass Media Bureau filed exceptions to the Initial Decision. Thereafter, this proceeding was frozen by the Commission's Public Notice, FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), in light of the decision of the Court of Appeals in Bechtel v. FCC, 10 F. 3d 875 (D.C. Cir. 1993), holding that the integration of ownership into management criterion used by the Commission to decide among competing applicants was unlawful.

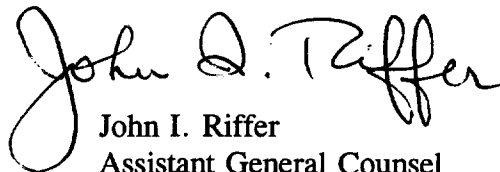
3. The applicants have now entered into a settlement agreement which they have attached to their Joint Request. Pursuant to that agreement, Normandy's application would be dismissed and it would, pursuant to an asset purchase agreement, be paid \$300,000.00 and \$50,000.00 worth of trade over a five year term for an assignment of the license and assets of Normandy's companion AM station, which has been granted (File No. BAL-980206GK), and for the physical assets used and useful in the operation of Normandy's FM station. Brandt's application would, in return for a further payment of \$137,500.00, be amended to substitute a new entity, Entertronics, and Brandt's application would be granted, with Entertronics substituted for Brandt as the surviving applicant. The staff of the Mass Media Bureau has reviewed the settlement proposal and has determined that Entertronics is fully qualified to be a licensee.

4. The Commission has held that settlements of frozen comparative renewal cases may be granted without regard to the amounts to be paid pursuant to such agreements. See EZ Communications, Inc., 12 FCC Rcd 3307 (1997). Therefore, the amount of the payment to be made to Brandt is of no consequence in the resolution of this matter. Furthermore, the payments to Normandy for the assets of its AM and FM station constitute reasonable compensation based on its an arms length transaction with Entertronics. Cf. The Western Connecticut Broadcasting Company (WSTC), 88 FCC 2d 1492 (1982) (approving transfer of assets in connection with settlement of comparative renewal proceeding). The Commission has also indicated that, in order to facilitate resolution of frozen hearing cases, it is inclined to waive its policy against settlements involving the award of a construction permit to a non-applicant third party, such as Entertronics. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, 12 FCC Rcd 22363, 22374-5 ¶ 26 (1997). We find it in the public interest to waive that policy here.

5. The applicants have also shown that their Joint Request complies in all respects with the requirements of 47 U.S.C. § 311(c) and the provisions of 47 C.F.R. § 73.3523 which replicate Section 311. The applicants have provided sworn statements that there is no other consideration for the dismissal of Normandy's renewal application, that their applications were not filed for the purpose of reaching or carrying out a settlement agreement, and that approval of the agreement will serve the public interest by facilitating investment in new programming and technology for the FM radio station and by terminating this litigation. Finally, Entertronics has shown that it is qualified to be a licensee and, good cause having been shown, the amendment of Brandt's application, substituting Entertronics as the applicant, will be accepted.

6. ACCORDINGLY, IT IS ORDERED, That, pursuant to the authority delegated under 47 C.F.R. § 0.251(c), and subject to a condition that the termination of this proceeding is subject to consummation of the parties' agreement,¹ the Motion to Intervene filed January 30, 1998 by Entertronics, Inc. IS GRANTED; the Joint Request for Approval of Agreement filed January 30, 1998 by Normandy Broadcasting Corporation and Lawrence E. Brandt and amended September 29, 1998 by Normandy Broadcasting Corporation, Lawrence E. Brandt and Entertronics, Inc. IS GRANTED and the attached agreement IS APPROVED; the Amendment filed September 29, 1998 by Normandy Broadcasting Corporation, Lawrence E. Brandt and Entertronics, Inc. IS ACCEPTED; the Exceptions filed January 28 and 29, 1993 by Normandy Broadcasting Corporation and the Mass Media Bureau, respectively, and the Motion to Reopen Record and Enlarge Issues filed April 16, 1997 by Lawrence E. Brandt ARE DISMISSED; the application of Normandy Broadcasting Corporation (File No. 910129UR) IS DISMISSED; the application of Lawrence E. Brandt, as amended to substitute Entertronics, Inc., as the applicant (File No. BPH-910430MB), IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "John I. Riffer". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John I. Riffer
Assistant General Counsel
Administrative Law Division
Office of General Counsel

¹ As they have requested, the parties may consummate their mutually contingent transactions at a single closing. This order will be effective with respect to the termination of the applicants' hearing rights upon their notifying the Commission that the closing under those transactions has taken place.